



Paper No. 5

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OFFICE OF PETITIONS

In re Application of
Ruben et al.
Application No. 09/848,271
Filed: May 4, 2001
Attorney Docket No. PF526DEC 19 2001
JKE JMM BM
HGS PATENT DEPT.DECISION GRANTING
PETITION; NOTICE OF
MISSING PARTS

This is a decision on the petition, filed on September 10, 2001, requesting that the above-identified application be accorded a filing date of May 4, 2001, and requesting that the Notice of Incomplete Nonprovisional Application ("Notice"), mailed on August 1, 2001 for this application, be withdrawn.

The petition is **GRANTED**.

The application was deposited on May 4, 2001. On August 1, 2001, the Office of Initial Patent Examination (OIPE) mailed the Notice requiring drawings of Applicants' invention, stating that the filing date would be the date of receipt of the omitted drawings, and advising that the declaration filed with the application was not signed.

As stated in MPEP § 601.01(f), it is the practice of the USPTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

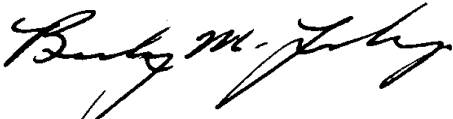
In view of the above, the Notice mailed August 1, 2001, was mailed in error and is hereby withdrawn.

The \$130.00 petition fee has been credited to Deposit Account No. 08-3425 as authorized in the fee transmittal form of the May 4, 2001 application.

The application still lacks a signed oath or declaration. Applicants are given **TWO MONTHS** from the mailing date of this decision to file a signed oath or declaration in compliance with 37 CFR 1.63 and to pay the \$130.00 surcharge set forth in 37 CFR 1.16(e) in order to avoid abandonment of the application. This time period may be extended pursuant to 37 CFR 1.136(a). The response should be directed to the attention of OIPE.

The application is being returned to OIPE to await the oath/declaration and surcharge and for further processing with a filing date of May 4, 2001, including indication in USPTO records that "0" sheets of drawings were present on filing.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



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